

# **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers  
**FROM/PHONE:** Chris Kovanes, Programs Administrator, 797-1102  
**SUBJECT:** Resolution

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, FOR THE ENGAGEMENT OF MILLER, LEGG & ASSOCIATES, INC. IN PROVIDING ATTRIBUTE INFORMATION THROUGH GIS/SURVEY BASED SUPPORT FOR ASSISTANCE IN APPLICATION FOR FCT-FLORIDA FOREVER PROGRAM GRANT.

**REPORT IN BRIEF:** The Florida Communities Trust (FCT)-Florida Forever Program Grant asks for specific information in which is obtained through a Geographic Information System (GIS) and surveying. Miller, Legg and Associates have been granted as the firm to perform continuing services (surveying) via resolution number R-2001-87.

Miller, Legg & Associates has worked on this grant last year for the city of Pembroke Pines. The grant was eventually awarded to the city.

The grant has been worked on by staff; however, it was concluded that expert assistance is necessary for full assurance the grant will be awarded. Staff did attend the Wetland Permitting School (July 17-20), which also led to the conclusion that additional expert assistance is necessary.

**PREVIOUS ACTIONS:** None.

**CONCURRENCES:** Not Applicable

**FISCAL IMPACT:** \$35,000 estimated for services rendered.

**ADDITIONAL COMMENTS:** Not Applicable

**RECOMMENDATION(S):** Motion to approve the resolution.  
**Attachment(s):** Resolution, Letter of Engagement

RESOLUTION \_\_\_\_\_

**A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, FOR THE ENGAGEMENT OF MILLER, LEGG & ASSOCIATES, INC. IN PROVIDING ATTRIBUTE INFORMATION THROUGH GIS/SURVEY BASED SUPPORT FOR ASSISTANCE IN APPLICATION FOR FCT-FLORIDA FOREVER PROGRAM GRANT.**

WHEREAS, the Town has various projects that fall into the "continuing services" category as defined by F.S.S. 287.055; and,

WHEREAS, it is in the Town's best interest to execute this contract for such services.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1: The Town Council of the Town of Davie does hereby accept the contractual agreement between the Town and Miller, Legg and Associates for the GIS/Surveying services for the purpose of completion of FCT-Florida Forever Program Grant.

SECTION 2: The Town Council hereby authorizes the expenditure for services rendered.

SECTION 3: This resolution shall take effect immediately upon the passage and adoption.

PASSED AND ADOPTED, THIS THE \_\_\_\_\_ DAY \_\_\_\_\_, 2001.

\_\_\_\_\_

MAYOR/COUNCIL MEMBER

Attest:

\_\_\_\_\_

TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.



July 25, 2001

Mr. Chris Kovanes  
Programs Administrator  
Town of Davie  
6591 Orange Drive  
Davie, Florida 33314-3399

Re: Letter of Engagement - Proposal No. 3925  
for the Town of Davie Grant Assistance (Survey/GIS)

Dear Mr. Kovanes:

We are pleased to present this letter of engagement for the following services:

Task 1 - Assistance in Application for FCT-Florida Forever Program Grant (Planning/Study) - Consultant shall provide assistance to the Town of Davie (Town) in preparation of grant applications for the ten (10) designated acquisition sites. Consultant shall provide the necessary information as outlined in the division of services between Miller, Legg & Associates, Inc. (MLA) and the Town of Davie in Exhibit "A" (the application form). Consultant shall also provide quality control peer review of the document prepared by the Town. Consultant shall provide the necessary copies of exhibits that MLA prepares and the Town will assemble and submit the grant application packages. Copies and prints shall be provided under Task 2 - Reimbursables.

It is acknowledged that due to the short time frame for submittal (August 13, 2001), the objective is to get a reasonably prepared application in the funding cycle for consideration on behalf of the Town. It is also acknowledged that conceptual designs shall be basic as no proposed development plans exist for the proposed parcels. Any monies remaining in this phase after submittal of the grant application will allow Consultant to assist in the completion of the application or future design iterations. Future needs beyond this scope will be identified and reviewed at that time.

The scope for this assistance is GIS/Survey based support in providing required attribute information for the application. This is intended to cover service through August 13, 2001. Consultant shall attend meetings, including Town Council meetings, provide coordination and perform other services as directed by the Client.

July 25, 2001

FEE: This fee is estimated not to exceed \$25,000 for labor. Hourly per the Hourly Rate Schedule in Exhibit B, Town of Davie Contract. Billing shall be based on actual hours expended by Consultant.

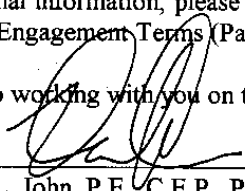
Task 2 - Reimbursables - This task shall include the customary reimbursable incurred by Consultant in providing the above services for out-of-pocket expenses such as photocopies, color prints, courier, etc.

FEE: Estimated not to exceed \$3,000.

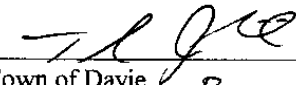
Dylan Larson will serve as project manager for this scope of services.

Please indicate your approval and authorization for us to begin this work by signing the enclosed copy of this letter and returning it to our office. If you have any questions, or require any additional information, please do not hesitate to call. Please see the attached Standard Letter of Engagement Terms (Page 3).

We look forward to working with you on this matter.

Consultant:   
David L. John, P.E., C.E.P., P.W.S.  
Senior Vice President of Business Development

Date: 7/23/01

Accepted by Owner:   
Town of Davie By Motion of Council

Date: 7/26/01

Print Name: Thomas J. Willet

Print Title: TOWN ADMINISTRATOR

STANDARD LETTER OF ENGAGEMENT TERMS  
(CONTRACT TERMS)

- 1) **Reimbursable Expenses:** Invoices for reimbursable expenses shall include the following: Government review and processing fees, title work, plotting, blueprinting, copying and printing, facsimile transmission/reception, courier service, travel mileage, approved subcontracted services and other necessary and customary costs. Reimbursable expenses shall be invoiced to Owner with a multiplier of 1.15.
- 2) **Unpaid Invoices:** If Owner fails to make any payment due Consultant for services and expenses within thirty (30) days after receipt of Consultant's invoice, the amounts due Consultant shall include a charge at the rate of 1 1/2% per month from said thirtieth (30) day. Consultant may, after giving seven days' written notice to Owner, suspend services without liability until Consultant has been paid in full all amounts due for services and expenses.
- 3) **Additional Services:** Additional services requiring immediate action rendered prior to receipt of Owner's authorization shall be paid for by Owner on an hourly basis per the Hourly Rate Schedule in use when said additional service is to be provided. The method of payment for additional services requiring authorization in advance shall be agreed upon by Owner and Consultant prior to commencement of said services.
- 4) **General Provisions:** The General Provisions of Contract shall be considered the basis for all terms and conditions of this letter of engagement. A copy of the General Provisions can be obtained from Miller Legg & Associates, Inc. However, upon execution of the letter of engagement, Owner accepts and agrees to the terms and conditions of the General Provisions.
- 5) **Limitation of Liability:** Consultant's liability and the liability of its employees, agents, representatives, directors, officers and shareholders to Owner and to all of Owner's construction contractors and subcontractors due to Consultant's professional negligent acts, errors or omissions, shall be limited, so that the combined total aggregate liability for all claims under this engagement letter to all those named above, shall not exceed the lesser of \$100,000 or Consultant's total fee for all engineering services rendered under this engagement letter to Owner.

## GENERAL PROVISIONS

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#### GENERAL PROVISIONS

Attached to and made a part of PROPOSAL dated  
July 24, 2001 between

Town of Davie (OWNER) and  
Miller, Legg & Associates, Inc., (CONSULTANT) in respect of the  
project (Project) described therein:

#### SECTION 1 - BASIC SERVICES OF CONSULTANT

##### 1.1 General

1.1.1 CONSULTANT shall perform professional services as hereinafter stated which include customary studies, civil, land surveying, traffic, environmental engineering and planning services and other related study and design services.

1.1.2 CONSULTANT shall advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services of the types described in paragraph 3.3 and assist OWNER in obtaining such data and services.

1.1.3 CONSULTANT shall consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.

##### 1.2 Study or Report Phase

After authorization to proceed with the Study or Report Phase:

1.2.1 CONSULTANT shall conduct the necessary research and prepare a written response or report as appropriate.

1.2.2 CONSULTANT shall submit the study or report to OWNER or other appropriate entity.

##### 1.3 Design Phase

After authorization to proceed with the Design Phase:

1.3.1 CONSULTANT shall prepare for incorporation in the Contract Documents drawings to show the general scope, extent and character of the work to be furnished and performed by Contractor(s) (hereinafter called "Drawings") and Specifications.

1.3.2 CONSULTANT shall submit applications and support data to the appropriate government agencies for the engineering approvals required for the project. CONSULTANT, in an effort to secure the approvals sought, shall respond to comments made by the agencies as a result of the submittals. However, CONSULTANT shall not be liable for failure to secure approvals if such failure is the result of decisions, actions, or inactions of OWNER or for other reasons beyond the control of CONSULTANT.

##### 1.4 Bidding Phase

After authorization to proceed with the Bidding Phase:

1.4.1 CONSULTANT shall prepare for review and approval by OWNER, its legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders (all of which shall be consistent with the forms and pertinent guide sheets prepared by the Engineers Joint Contract Documents Committee), and assist in the preparation of other related documents.

1.4.2 CONSULTANT shall assist OWNER in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment and services.

1.4.3. CONSULTANT shall issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.

1.4.4 CONSULTANT shall consult with OWNER concerning and determine the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.

1.4.5 CONSULTANT shall attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

##### 1.5 Construction Phase

During the construction phase:

1.5.1 CONSULTANT shall consult with and advise OWNER and act as his representative as provided in Articles 1 through 17, inclusive, of the Standard General Conditions of the Construction Contract, No. 1910-8 (1983 edition as amended from time to time or any supplementary or replacement thereof) of the Engineers Joint Contract Documents Committee. The extent and limitations of the duties, responsibilities, and authority of CONSULTANT as assigned in said Standard General Conditions shall not be modified except as CONSULTANT may agree in writing. All of OWNER's instructions to Contractor(s) will be issued through CONSULTANT who will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions except as otherwise provided in writing.

1.5.2 In connection with observations of the work of Contractor(s) while it is in progress:

1.5.2.1 The CONSULTANT shall make visits to the site at intervals appropriate to the various stages of construction as CONSULTANT deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor(s) work. Based on information obtained during such visits and on such observations, CONSULTANT shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and CONSULTANT shall keep the OWNER informed of the progress of the work. CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work.

1.5.2.2. The purpose of CONSULTANT's visits to the site will be to enable CONSULTANT to better carry out the duties and responsibilities assigned to and undertaken by CONSULTANT during the Construction Phase, and, in addition, by exercise of CONSULTANT's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). On the other hand, CONSULTANT shall not, during such visits or as a result of such observations of Contractor(s) work in progress, supervise, direct or have control over Contractor(s) work nor shall CONSULTANT have authority over responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, CONSULTANT can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s) failure to finish and perform their work in accordance with the Contract Documents.



1.5.2.3 During such visits and on the basis of such observations, CONSULTANT may disapprove or reject Contractor(s) work while it is in progress if CONSULTANT believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

1.5.3. CONSULTANT shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare change orders as required.

1.5.4 CONSULTANT shall review (or take appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions) and samples, and other data which Contractor(s) are required to submit, but only for conformance with the information given in the Contract Documents. Such review or other action shall not extend to means, methods, sequences, techniques, or procedures of construction or to safety precautions and programs incident thereto.

1.5.5 CONSULTANT shall determine the acceptability of substitute materials and equipment proposed by Contractor(s); but subject to the provisions of paragraph 2.2.1.

1.5.6 CONSULTANT shall have authority, as OWNER's representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testings, and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

1.5.7. CONSULTANT shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work; but CONSULTANT shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.

1.5.8 Based on CONSULTANT's on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules;

1.5.8.1 The CONSULTANT shall determine the amount owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations for payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated; that, to the best of CONSULTANT's knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in his recommendation). In the case of unit price work, CONSULTANT's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

1.5.8.2. By recommending any payment CONSULTANT will not thereby be deemed to have represented that continuous or exhaustive or detailed reviews or examinations have been made by CONSULTANT to check the quality or quantity of Contractor(s) work as it is furnished and performed beyond the responsibilities specifically assigned to the CONSULTANT in this Agreement and the Contract Documents. CONSULTANT's review of Contractor(s)

work for the purposes of recommending payments will not impose on CONSULTANT responsibility to supervise, direct or control such work or the means, methods, sequences, techniques, or procedures of construction or safety precautions or programs incident thereto or Contractor(s) compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on CONSULTANT to make any examination to ascertain how or for what purposes any Contractor(s) has used the moneys paid on account of the Contract Price, to determine that title of any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

1.5.9 CONSULTANT shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor(s) in accordance with the Contract Documents, but such reviews will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests and approvals, the results certified indicate compliance with, the Contract Documents; and shall transmit them to OWNER with written comments.

1.5.10. CONSULTANT shall conduct a visit to determine if the Project is substantially complete and a final visit to determine if the completed work is acceptable so that CONSULTANT may recommend, in writing, final payment to Contractor(s) and may give written notice to OWNER and Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice shall be subject to the limitations expressed in paragraph 1.5.8.2.

1.5.11. CONSULTANT shall not be responsible for the acts or omissions of any Contractor, or any subcontractor or supplier, or any of Contractor(s) or subcontractors' agents or employees or any other persons (except CONSULTANT's own employees and agents) at the site or otherwise performing any of Contractor(s) work; however, nothing contained in paragraphs 1.5.1 through 1.5.10., inclusive, shall be construed to release CONSULTANT from liability for failure to perform properly duties undertaken by CONSULTANT in the Contract Documents.

## SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT

### 2.1 Services Requiring Authorization In Advance

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.15, inclusive. These services are not included as part of the Basic Services.

2.1.1 Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private and governmental grants, loans, or advances in connection with the Project.

2.1.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER (except as included under Basic Services).

2.1.3 Services resulting from significant changes in the general scope, extent, or character of the Project or major changes in documentation previously accepted by OWNER where changes are due to causes beyond CONSULTANT's control.

2.1.4 Preparing documents for alternate bids requested by OWNER for work which is not executed or for out-of-sequence work or for preparing bid documents requested by OWNER for work that has not received the necessary engineering approvals from the governing authorities.

2.1.5 Investigations and studies involving, but not limited to detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; and the preparation of rate schedules, and expense statements, cash flow, and economic evaluations, feasibility studies, and appraisals. Assistance in obtaining financing for the Project; evaluating processes available for licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

2.1.6 Furnishing services of independent professional associates and consultants for other than Basic Services (which include, but are not limited to customary studies, traffic, civil and environmental engineering and planning services) and providing data or services of the types described in paragraph 3.3 when OWNER employs CONSULTANT to provide such data or services in lieu of furnishing the same in accordance with paragraph 3.3.

2.1.7 Services resulting from the award of more than one prime contract for construction, materials, equipment or services for the Project, or from the construction contract containing cost-plus or incentive-savings provisions for Contractor's basic compensation, or from arranging for performance by persons other than the principal prime contractors or from administering OWNER's contracts for such services.

2.1.8 Services during out-of-town travel required of CONSULTANT other than visits to the site or OWNER's office.

2.1.9 Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services.

2.1.10 Preparation of operating, maintenance, and staffing manuals.

2.1.11 Services after completion of the Construction Phase (unless included under Basic Services).

2.1.12 Preparing to serve or serving as a consultant or witness in any litigation, arbitration or other legal or administrative proceeding involving the project.

2.1.13 Providing services normally furnished by OWNER.

2.1.14 Services required as a result of a lapse of six months or more from receipt of government approvals to the beginning of construction.

2.1.15 Additional services in connection with the Project, including services which are to be furnished by OWNER in accordance with Article 3, and services not otherwise provided for in this Agreement.

## 2.2 Services Requiring Immediate Action

When required by the Contract Documents in circumstances beyond CONSULTANT's control, CONSULTANT shall furnish or obtain from others, as circumstances require during construction and without waiting for specific authorization from OWNER, Additional Services of the types listed in paragraphs 2.2.1 through 2.2.6, inclusive. These services are not included as part of the Basic Services. CONSULTANT shall advise OWNER promptly after starting any such Additional Services which will be paid for by OWNER as indicated in PROPOSAL.

2.2.1 Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

2.2.2 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.2.3 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, as determined by CONSULTANT in CONSULTANT's sole opinion, (3) acceleration of the progress schedule involving services beyond normal working hours, and (4) default by any Contractor.

2.2.4 Services in connection with any partial utilization of any part of the Project by OWNER prior to Substantial Completion.

2.2.5 Evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work as determined by CONSULTANT in CONSULTANT's sole opinion.

2.2.6 Services provided beyond normal working hours when necessitated by Contractor(s) working beyond normal working hours.

## SECTION 3 - OWNER'S RESPONSIBILITIES

Owner shall do the following in a timely manner so as not to delay the services of CONSULTANT:

### 3.1 OWNER's Representative

3.1.1 Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to CONSULTANT's services for the Project.

3.1.2 If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime Contractors.

### 3.2. OWNER's Requirements

Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

### 3.3 Data to be Provided by OWNER

Furnish to CONSULTANT, as required for performance of CONSULTANT's Basic Services, the following:

3.3.1 All available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

3.3.2 Data prepared by or services of others, including without limitation borings, probings, and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment.

3.3.3 Appropriate professional interpretations of all of the foregoing.

3.3.4 Environmental assessment and impact statements.

3.3.5 Property, boundary, easement, right-of-way, topographic and utility surveys.

3.3.6 Property descriptions.

3.3.7 Zoning, deed and other land use restrictions.

3.3.8 Other special data or consultations not covered in Section 2.

3.3.9 Data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such services pursuant to paragraphs 3.5 through 3.6., inclusive) so that CONSULTANT may make the necessary findings to support opinions of probable Total Project Costs.

#### 3.4 Project Access

Arrange for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform services under this Agreement.

#### 3.5 OWNER's Decisions

Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by CONSULTANT, obtain advice of any attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.

#### 3.6 Financial Services

Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or CONSULTANT may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing services as OWNER may require to ascertain how or for what purposes any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rules, regulation, ordinance, code or order applicable to their furnishing and performing the work.

#### 3.7 OWNER's Attendance

Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.

#### 3.8 Notification to CONSULTANT

Give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect or nonconformance in the work of any Contractor.

#### 3.9 Additional Services

Direct CONSULTANT to provide, Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.

#### 3.10 Cost to OWNER

Bear all costs incident to compliance with the requirements of this Section 3.

### SECTION 4 - PERIODS OF SERVICE

#### 4.1 Compensation Beyond Contract Period

The provisions of this Section 4 and the various rates of compensation for CONSULTANT's services provided elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of this

Project through completion of the Construction Phase. CONSULTANT's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts, construction and initial operation of the Project including extra work and required extensions thereto. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such dates are exceeded through no fault of CONSULTANT, all rates, measures and amounts of compensation provided herein shall be subject to adjustment based on CONSULTANT's then current rates.

#### 4.2 Extension of Contract Period

If OWNER has requested significant modifications or changes in the general scope, extent or character of the Project, the time of performance of CONSULTANT's services shall be adjusted equitably.

### SECTION 5 - MISCELLANEOUS

#### 5.1 Reuse of Documents

All documents including Drawings and Specifications prepared by CONSULTANT pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by CONSULTANT for the specific purposes intended will be at OWNER's sole risk and without liability or legal exposure to CONSULTANT; and OWNER shall indemnify and hold harmless CONSULTANT from any claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by OWNER and CONSULTANT.

#### 5.2 Opinions of Cost

Since CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable Project Cost and Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgement as an experienced and qualified professional engineer, familiar with the construction industry; but CONSULTANT cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from opinions of probable cost prepared by him. If prior to the Bidding or Negotiating Phase OWNER wishes greater assurance as to Project or Construction Cost he shall employ an independent cost estimator. Consulting services to modify the Contract Documents to bring the Construction Cost within any limitation established by OWNER will be considered Additional Services and paid for as such by OWNER.

#### 5.3 Termination

5.3.1 CONSULTANT may, after giving seven days' written notice to OWNER, suspend services without liability under this Agreement until he has been paid in full all amounts due him for services and expenses.

5.3.2 The obligation to provide further services under this Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, CONSULTANT will be paid for all services rendered to the date of termination, all reimbursable expenses and termination expenses.

#### 5.4 Successors and Assigns

5.4.1 OWNER and CONSULTANT each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party of this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

5.4.2 Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, and except to the extent that the effect of this limitation may be restricted by law.

Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent consultants, associates and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

5.4.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER and CONSULTANT.

#### 5.5 Mediation

All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof shall be submitted to non-binding mediation.

#### 5.6 Limitation of Liability

CONSULTANT's liability and the liability of its employees, agents, representatives, directors, officers, and shareholders to OWNER and to all of OWNER's construction contractors and subcontractors due to CONSULTANT's professional negligent acts, errors, or omissions shall be limited such that the combined total aggregate liability for all claims under this agreement, to all those named above shall not exceed \$100,000 or CONSULTANT's total fee for all engineering services rendered under this agreement to OWNER, whichever is the lesser of the two. It is the intention of the parties that the CONSULTANT's combined total aggregate liability to all claimants for all claims made under this agreement shall not exceed the lesser of \$100,000 or the CONSULTANT's total fee for all engineering services rendered to OWNER under this agreement.

END

